



46 CFR Part 525

[Docket No. 21-06]

RIN: 3072-AC87

Marine Terminal Operator Schedules

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This final rule adopts without substantive change the proposed rule. The Federal Maritime Commission (FMC or Commission) seeks to update outdated references to Commission offices, modernize references to technology, and clarify existing requirements associated with the filing of marine terminal operator (MTO) schedules.

DATES: This final rule is effective: [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For technical questions, contact Kristen Monaco, Director, Bureau of Trade Analysis, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573-0001. *Phone:* (202) 523-5796. *E-mail:* tradeanalysis@fmc.gov. For legal questions, contact Steven Andersen, General Counsel, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573-0001. *Phone:* (202) 523-5738. *E-mail:* GeneralCounsel@fmc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 46 U.S.C. 40501(f), MTOs may make public a schedule of rates, regulations, and practice. Additionally, Congress directs the Commission to prescribe the form and manner in which MTO schedules shall be published. 46 U.S.C. 40501(g)(3). The Commission's regulations regarding MTO schedules are outlined in 46 CFR part 525. Consistent with the language in 46 U.S.C. 40501(f), part 525 states that an MTO, at its discretion, may make available to the public

a schedule of its rates, regulations, and practices. Part 525 also discusses the requirements when an MTO decides to make terminal schedules available to the public.

II. Summary of Proposed Changes

In Fiscal Year 2021, the Commission reviewed its regulations regarding MTO schedules found in 46 CFR part 525. On September 22, 2021, the Commission issued a notice of proposed rulemaking that proposed several changes to part 525 that are neither substantive nor policy related. 86 FR 52627. The proposed revisions updated references to a Commission bureau and deleted references to outdated technology. Additionally, the FMC clarified definitions or revised them to be consistent with other parts of the Commission's regulations. The Commission requested comments on these proposed amendments.

III. Summary of Comments

One shipper filed comments in this docket. However, these comments, which relate to per diem charges, detention and demurrage fees, and dual transaction requirements at specific terminals, do not address the proposed revisions to part 525. The commenter neither expressed support nor opposition to the proposed part 525 revisions. Because the issues raised by the commenter are outside the scope of the proposed amendments and the rulemaking, the FMC is not making changes to the final rule based on these comments. The FMC now adopts all of the proposed amendments without substantive change in this final rule.

IV. Final Rule

The proposed rule contained revisions that were not policy related and the Commission's intent was limited to modernizing outdated requirements, clarifying existing requirements and definitions, and making the existing requirements and definitions consistent with other parts of the Commission's regulations. For the reasons stated in the NPRM and described below, the Commission is adopting the revisions in the proposed rule with non-substantive changes.

1. Section 525.1.

The proposed rule revises references to the Shipping Act of 1984 (the Act) to remove

specific cites to the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998 because several other laws also amend the Shipping Act of 1984. *See* An Act to Complete the Codification of Title 46, United States Code, “Shipping,” as Positive Law, Pub. L. 109-304, 120 Stat. 1485 (2006); Frank LoBiondo Coast Guard Authorization Act of 2018, Pub. L. 115-282, 132 Stat. 4192 (2018). These revisions affect section 525.1(a) and (c)(1). The proposed rule added clarifying language to the definition of “bulk cargo” to explain that bulk “containerized cargo tendered by the shipper” is subject to mark and count and is, therefore, subject to the requirements of this part. The proposed rule amended the definition of “forest products” to correct a typographical error.

In addition, the proposed rule revised the definition of “marine terminal operator” to mean “a person engaged in the United States in the business of providing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier[.]” This language is consistent with the statutory definition of an MTO. *See* 46 U.S.C. 40102(15). The proposed rule also added language to clarify that shippers or consignees who exclusively provide their own marine terminal facilities in connection with providing marine terminal services are not MTOs.

The proposed rule amended the definition of “terminal facilities” by adding “docks, berths, piers, [and] aprons” to the list of structures comprising a terminal unit. In addition, the proposed language replaces the term “water carriers” with “ocean common carriers.” As a result of these revisions, the definition of “terminal facilities” is consistent with the definition of “marine terminal facilities” in 46 CFR part 535.

The proposed rule also introduced a definition for the “United States” that is consistent with the definition found in 46 U.S.C. 114. To accommodate the new paragraph, the proposed rule renumbered paragraphs 525.1(c)(21) to (23) to be paragraphs 525.1(c)(22) to (24).

Additionally, the proposed rule revised the definition of an MTO to delete “or a commonwealth, territory, or possession thereof,” because those entities are now included in the definition of “United States.”

The comments received do not address these proposed revisions.

The final rule adopts the revisions described above without change.

A. Section 525.2

The proposed rule did not propose revisions to section 525.2. The comments do not address section 525.2. Thus, the final rule does not revise section 525.2.

B. Section 525.3

With respect to section 525.3, Availability of marine terminal operator schedules, the proposed rule removed outdated and unnecessary language relating to accessing electronically published MTO schedules. The proposed rule deleted the terms “personal computer (PC),” “dial-up connection,” “the Internet,” “Web browser,” “Telnet session,” “modem,” and any further definition or technical requirements relating to these terms. The proposed language also amended the term “URL” to mean “uniform resource locator.” The proposed rule deleted current paragraphs 525.3(c) and (e) regarding dial-up connection requirements and Commission access as the technologies referenced in those paragraphs are obsolete.

With the deletion of specific paragraphs as discussed above, the proposed rule renumbered the remaining paragraphs. With respect to current paragraph 525.3(f), the proposed rule replaces references to the “Bureau of Tariffs, Certification and Licensing,” which no longer exists, with the “Bureau of Trade Analysis” (BTA). In addition, the proposed rule also replaced “name and telephone number of firm’s representative” with simply “contact information for its representative.” The proposed rule also clarifies that BTA has authority to accept submitted Form FMC-1 filings and revisions, and that the filings are pending until accepted.

With respect to current paragraph 525.3(g), the proposed rule clarified that an MTO may make available to the public its schedules and that any such schedule made available to the public is enforceable by an appropriate court as an implied contract without proof of actual knowledge of its provisions. This language is consistent with 46 U.S.C. 40501(f).

D. Section 525.4

The proposed rule did not propose revisions to section 525.4. The comments do not address section 525.4. Thus, the final rule does not revise section 525.4.

V. Regulatory Notices and Analysis

Congressional Review Act

The rule is not a “major rule” as defined by the Congressional Review Act, codified at 5 U.S.C. 801 et seq. The rule will not result in: (1) an annual effect on the economy of \$100,000,000 or more; (2) a major increase in costs or prices; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies. 5 U.S.C. 804(2).

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, provides that whenever an agency promulgates a final rule after being required to publish a notice of proposed rulemaking under the Administrative Procedure Act (APA), 5 U.S.C. 553, the agency must prepare and make available for public comment a final regulatory flexibility analysis describing the impact of the rule on small entities, unless the head of the agency certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 604, 605.

Accordingly, the Chairman of the Federal Maritime Commission certifies that the final rule will not have a significant impact on a substantial number of small entities. The regulated business entities that would be impacted by the rule are marine terminal operators. The Commission has determined that marine terminal operators generally do not qualify as small entities under the guidelines of the Small Business Administration (SBA). *See FMC Policy and Procedures Regarding Proper Consideration of Small Entities in Rulemakings* (Feb. 7, 2003), available at https://www.fmc.gov/wp-content/uploads/2018/10/SBREFA_Guidelines_2003.pdf.

National Environmental Policy Act

Upon completion of an environmental assessment, it was determined that the proposed rule will not constitute a major Federal action significantly affecting the quality of the human

environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., and that preparation of an environmental impact statement is not required. This FONSI will become final within 10 days of publication of this notice in the Federal Register unless a petition for review is filed by any of the methods described in the ADDRESSES section of the document. The FONSI and environmental assessment are available for inspection at the Commission's Electronic Reading Room at: <https://www2.fmc.gov/readingroom/proceeding/21-06/>.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) (PRA) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in proposed rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11.

The information collection requirements in Part 525, Marine Terminal Operator Schedules, are currently authorized under OMB Control Number 3072-0061. In compliance with the PRA, the Commission submitted the proposed revised information collections to the Office of Management and Budget. Notice of the revised information collections was published in the Federal Register and public comments were invited. *See* 86 FR 52627 (September 22, 2021). Comments received regarding the proposed changes are discussed above. No comments specifically addressed the information collected pursuant to part 525 and no changes were made in the final rule due to public comments.

The final rule updates a reference to a Commission bureau and deletes references to outdated technology. In addition, the final rule clarifies definitions as necessary or revises them to be consistent with other parts of the Commission's regulations. The final rule does not substantively impact the information collected pursuant to part 525.

Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards in E.O. 12988 titled, “Civil Justice Reform,” to minimize litigation, eliminate ambiguity, and reduce burden. Section 3(b) of E.O. 12988 requires agencies to make every reasonable effort to ensure that each new regulation: (1) clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, at <http://www.reginfo.gov/public/do/eAgendaMain>.

List of Subjects in 46 CFR Part 525

Marine Terminal Operator Schedules.

For the reasons set forth above, the Federal Maritime Commission is amending 46 CFR part 525 as follows:

Part 525-MARINE TERMINAL OPERATOR SCHEDULES

1. The authority citation for part 525 continues to read as follows:

Authority: 46 U.S.C. 40102, 40501, 41101-41106.

2. Amend §525.1 by:

- a. Revising paragraphs (a) and (c)(1), (2), (7), (8), (13), (18), and (19);
- b. Redesignating paragraphs (c)(21) through (23) as paragraphs (c)(22) through (24); and
- c. Adding a new paragraph (c)(21).

The revisions and addition read as follows:

§525.1 Purpose and scope.

(a) *Purpose.* This part implements the Shipping Act of 1984, as amended (46 U.S.C. 40101-41309). The requirements of this part are necessary to enable the Commission to meet its responsibilities with regard to identifying and preventing unreasonable preference or prejudice and unjust discrimination pursuant to section 10 of the Act (46 U.S.C. 41101-41106).

* * * * *

(c) * * *

(1) *Act* means the Shipping Act of 1984, as amended.

(2) *Bulk cargo* means cargo that is loaded and carried in bulk without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk containerized cargo tendered by the shipper is subject to mark and count and is, therefore, subject to the requirements of this part.

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(7) *Expiration date* means the last day after which the entire schedule or a single element of the schedule, is no longer in effect.

(8) *Forest products* means forest products including, but not limited to, lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp in rolls, wood pulp in unitized bales, paper and paper board in rolls or in pallet or skid-sized sheets, liquid or granular by-products derived from pulping and papermaking, and engineered wood products.

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(13) *Marine terminal operator* means a person engaged in the United States in the business of providing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to Subchapter II of Chapter 135 of Title 49, United States Code. A marine terminal operator

includes, but is not limited to, terminals owned or operated by states and their political subdivisions; railroads who perform port terminal services not covered by their line haul rates; common carriers who perform port terminal services; and warehousemen who operate port terminal facilities. For the purposes of this part, marine terminal operator includes conferences of marine terminal operators. This term does not include shippers or consignees who exclusively provide their own marine terminal facilities in connection with tendering or receiving proprietary cargo from a common carrier or water carrier.

* * * * *

(18) *Terminal facilities* means one or more structures comprising a terminal unit, which include, but are not limited to docks, berths, piers, aprons, wharves, warehouses, covered and/or open storage spaces, cold storage plants, cranes, grain elevators and/or bulk cargo loading and/or unloading structures, landings, and receiving stations, used for the transmission, care and convenience of cargo and/or passengers in the interchange of same between land and ocean common carriers or between two ocean common carriers.

* * * * *

(21) *United States* means the States of the United States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States.

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3. Amend §525.3 by revising paragraphs (b) through (e) to read as follows:

§525.3 Availability of marine terminal operator schedules.

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(b) *Access to electronically published schedules.* Marine terminal operators shall provide access to their terminal schedules via the internet.

(c) *Internet connection.* (1) The internet connection requires that systems provide a uniform resource locator (URL) internet address (e.g., <http://www.tariffsrus.com> or <http://1.2.3.4>).

(2) Marine terminal operators shall ensure that their internet service providers provide static internet addresses.

(d) *Notification.* Each marine terminal operator shall notify the Commission's Bureau of Trade Analysis (BTA), prior to the commencement of marine terminal operations, of its organization name, home office address, contact information for its representative, the location of its terminal schedule(s), and the publisher, if any, used to maintain its terminal schedule, by electronically submitting Form FMC-1 via the Commission's website at www.fmc.gov. Any changes to the above information shall be immediately transmitted to BTA within 30 calendar days. BTA has the authority to accept submitted Form FMC-1 filings and revisions. Form FMC-1 filings are pending until accepted. The Commission will publish, on its website, the location of any terminal schedule made available to the public.

(e) *Form and manner.* A marine terminal operator may make available to the public a schedule of rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining to receiving, delivering, handling, or storing property at its marine terminal. Any such schedule made available to the public is enforceable by an appropriate court as an implied contract without proof of actual knowledge of its provisions. Each terminal schedule made available by a marine terminal operator shall contain an individual identification number, effective date, expiration date, if any, and the terminal schedule in full text and/or data format showing the relevant rates, charges, and regulations relating to or connected with the receiving, handling, storing, and/or delivering of property at its terminal facilities.

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By the Commission.

William Cody,
Secretary.

Billing Code: 6730-02

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